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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 299

LINO PADRON RIVERA,

Petitioner,

vs.

THE PEOPLE OF PUERTO RICO, EX REL. LUIS A. CASTRO.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT AND BRIEF IN SUPPORT THEREOF.

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No. 299

LINO PADRON RIVERA,

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THE PEOPLE OF PUERTO RICO, EX REL. LUIS A. CASTRO,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT AND BRIEF IN SUPPORT THEREOF.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Lino Padrón Rivera, prays a writ of certiorari to review the judgment of the Circuit Court of Appeals, First Circuit, entered on April 28, 1944, in the

cause entitled Lino Padrón Rivera *versus* The People of Puerto Rico ex rel. Luis A. Castro (No. 3888), affirming judgment of the Supreme Court of Puerto Rico, which modified judgment of the District Court of San Juan, Puerto Rico.

The term for filing petition for a writ of certiorari shall expire on July 28, 1944. 28 U. S. C. A. 350.

Summary Statement.

The Attorney General of Puerto Rico, because of the importance of the question and the public interest involved, authorized respondent Luis A. Castro to file his complaint in the nature of a quo warranto proceeding against petitioner Lino Padrón Rivera to investigate the title or right of petitioner herein to the office of Secretary of the Capital of Puerto Rico.

Respondent Luis A. Castro assailed on several grounds petitioner's appointment to, and right to hold the office of secretary of the Government of the Capital (City Clerk of San Juan). After a hearing, the District Court of San Juan, where the quo warranto proceedings had been filed, held, as a matter of law, that petitioner's status as member of the Insular Legislature did not invalidate his subsequent appointment as City Clerk,[1] inasmuch as municipal offices are not included within the meaning and scope of the prohibition contained in Section 30 of the Organic Act of Puerto Rico.[2]

The District Court, nevertheless, found, as a matter of fact, that when petitioner was appointed to said municipal office, there was no vacancy therein which could be filled, because respondent Castro was then lawfully holding the

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[1] R. 20.

[2] 39 Stat. 951; 48 U. S. C. A. 737.

office, and that there had been no abandonment of said office by respondent prior to the appointment thereto of petitioner.[3] Judgment of ouster was, therefore, entered.[4]

An appeal having been taken to the Insular Supreme Court, the judgment was affirmed in substance,[5] although the said Supreme Court disagreed as to the reasons for the judgment. It held that "the conclusions (of fact) reached by the lower court are clearly erroneous and insufficient in themselves to support the judgment appealed from",[6] but that, as an appeal is taken from the judgment and not from the grounds thereof, it was the court's duty to affirm, if, in its opinion, there were other grounds to justify the judgment. The Insular Supreme Court then proceeded to decide, thereby reversing the District Court's ruling, that petitioner could not legally be appointed to the office of City Clerk of San Juan, even though the latter is a municipal office, because such dual office holding is "in violation of the provisions of the Organic Act".[7] The court also declared that Section 30 of said Act prohibits the holding, by a member of the Insular Legislature, of offices not only in the insular government but altogether in any of the various municipal governments.

The District Court's Opinion. The grounds of the District Court's decision appear very lucidly in its opinion.[8] Said court had, in a prior case, decided the same question, another magistrate having written the opinion.[9] It had held that a person who holds the office of senator in Puerto Rico is entitled to be appointed to, and hold an adminis-

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[3] R. 26, 27.
[4] R. 46.
[5] R. 58.
[6] R. 53.
[7] R. 57.
[8] R. 8.
[9] R. 13.

trative office in the city government of San Juan. The District Court, after a review of the authorities and decisions, concluded, in the instant case, that "the status of member of the legislative assembly (senator) of defendant does not incapacitate him to be appointed secretary of the Capital, nor to fill said office".[10]

The Supreme Court's Opinion. The Insular Supreme Court reasoned that, inasmuch as both the insular and the municipal governments in Puerto Rico "are in reality parts of a single governmental instrumentality—the Government of Puerto Rico",[11] even though they function "as distinct and separate entities",[12] in view of the fact that Section 30 of the Organic Law forbids the appointment of senators or representatives to any civil office *under the Government of Puerto Rico,* a senator cannot legally be appointed to a municipal office. The Supreme Court pointed out that municipalities are creatures of the Legislature, which can create new municipal subdivisions, or consolidate those already in existence. It also noted that the Legislature enacts the law governing the various municipalities, creates municipal offices and fixes or increases the salaries of municipal officers. These considerations led to the conclusion, the Court said, that the municipal governments "are integral parts of the Government of Puerto Rico, and therefore the civil offices in the municipalities are civil offices under the Government of Puerto Rico."[13]

Petitioner herein filed a petition for rehearing before the Insular Supreme Court, which was summarily denied.[14]

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[10] R. 20.
[11] R. 55.
[12] R. 55.
[13] R. 56.
[14] R. 59, 75.

An appeal was then taken to the Circuit Court of Appeals for the First Circuit,[15] and the necessary bonds—cost and supersedeas—were posted and duly approved.[16]

The Circuit Court of Appeals affirmed.[17] It noted the importance of the question presented, which involves the principles of public administration in the island,[18] and, after stating that the authorities are divided as to whether a municipal office is an office under the state government within the meaning of corresponding provisions of the state constitutions, indicated that "the better reasoning" [19] reaches the result adverse to petitioner's contention. It made a cursory examination of the legislative history of Section 30 of the Puerto Rican Organic Act, in an attempt to show that the validation of petitioner's city office holding would imply circumvention of the avowed purpose of Congress in ingrafting said Section 30 into the Organic Law, holding that the intention was "to remove from the thoughts of legislators any expectation of reward or personal advantage." [20]

Both the Insular Supreme Court and the Circuit Court of Appeals misconstrued the plain meaning of the statutory phrase in controversy, and ignored its true scope and its limited prohibition. Both courts heeded not, in the least, the persuasive force and effect of the weight of authority on the matter, definitely dissipative of first-impression doubts as to the underlying motive of the constitutional precept and as to the evil sought to be remedied.

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[15] R. 75, 76.
[16] R. 76.
[17] R. 84.
[18] R. 81.
[19] R. 82.
[20] R. 83.

Statement of Jurisdiction.

The jurisdiction of this Court is invoked under the provisions of Section 240 (a) of the Judicial Code of the United States, as amended by the Act of February 13, 1925, c. 299, sec. 1, 43 Stat. 938. (28 U. S. C. A. 347.)

The judgment of the Circuit Court of Appeals for the First Circuit was entered April 28, 1944.[21]

Question Presented.

Only one question is presented, involving the proper construction of a section of the Organic Law for Puerto Rico and, therefore, a question of importance related to public administration in an insular possession of the United States.

The only issue presented is whether Section 30 of the federal statute, passed by Congress in 1917 to provide a civil government for Puerto Rico, prohibits the appointment of petitioner herein, a Senator in the Insular Legislature, to the office of City Clerk of San Juan, the Capital of Puerto Rico.

It is the contention of petitioner that the Circuit Court of Appeals, First Circuit, erred manifestly in holding, contrary to the clear intent of Congress and to the letter and spirit of the statute, that Section 30 of the Organic Act for Puerto Rico forbids the appointment of members of the Insular Legislature to strictly municipal, as distinguished from insular, offices in the government of the island of Puerto Rico.

Petitioner contends that said Section 30, if properly construed in the light of the evils sought to be remedied by its enactment and with the aid of the context of the whole statute, does not prohibit the appointment of petitioner to a municipal office, such as is that of City Clerk of San Juan,

[21] R. 84.

and that the prohibition is directed solely to appointments to office in the Insular Government, as distinguished from the governments of the various municipalities.

Reasons Relied on for the Allowance of the Writ.

This case involves an important and far-reaching question of interpretation of a federal statute enacted to provide for an orderly, effective and republican type of government for an insular possession of the United States. The final decision herein will affect each and every one of the seventy-seven municipal governments now organized and in existence in the Island of Puerto Rico.

Both the Circuit Court of Appeals and respondent The People of Puerto Rico agree that the question presented "is one of importance to Puerto Rico, affecting as it does the essential principles of public administration."[22] The court below noted specially this feature of the case.[23]

The extension to municipal offices of the statutory prohibition, directed to legislators, against office-holding under the Insular Government deprives the members of the Insular Senate and House of Representatives of their right to occupy posts in the various city governments of the Island, and, instead of removing "from the thoughts of legislators any expectation of reward or personal advantage,"[24] subjects them to stronger undue influences from private interests willing to offer salaried opportunities. Legislators in Puerto Rico do not receive an annual salary. They receive compensation at the rate of $7 per day for the number of days of each regular session, and mileage at the rate

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[22] Brief for the People of Puerto Rico, p. 5 (Filed in the Circuit Court of Appeals).

[23] It said, inter alia: "The People of Puerto Rico, however, have filed a brief and argued the case before us because they say it is a question of importance involving the principles of public administration in the island." R. 81.

[24] Opinion of the court below, R. 83.

of ten cents per kilometer in going to and returning from the Capital.[25] And the Legislative Assembly convenes annually, beginning on the second Monday in February of each year and closing not later than April 15 following.[26] Special sessions may not last more than fourteen days.[27] Therefore, legislators receive, at the most, less than five hundred dollars compensation yearly. A construction of the Organic Act which deprives them of an opportunity to earn their subsistence certainly does not aid in removing from their thoughts "any expectation of reward or personal advantage."

The problem is also presented as to the effect on the various municipal governments, which heretofore have had legislators appointed to city positions, with reference to the validity of said officers' actions and official utterances and behavior. The judgment of the Circuit Court of Appeals apparently determines nullity *ab initio* of such appointments.[28] Should the decision thus rendered be upheld, grave consequences will undoubtedly ensue, nay, even disorder and chaos, resultant from litigation urging invalidity of municipal contracts, bonds, etc.

Petitioner herein earnestly believes, and respectfully submits, that the Circuit Court of Appeals for the First Circuit has so far sanctioned a departure by the Supreme Court of Puerto Rico from the accepted and usual course of construction of a federal statute as to call for an exercise of this Court's power of supervision, to the end that a substantial question of interpretation of a federal law, governing the public administration norms of an insular possession, be authoritatively settled.

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[25] Organic Law for Puerto Rico, Sec. 31, 48 U. S. C. A. 820.
[26] Ib., Sec. 33.
[27] Ib.
[28] R. 81.

Wherefore your petitioner respectfully prays that a writ of certiorari be granted herein and the judgment of the Circuit Court of Appeals for the First Circuit, in the case entitled *Lino Padrón Rivera vs. The People of Puerto Rico ex rel. Luis A. Castro*, No. 3888, affirming the judgment of the Supreme Court of Puerto Rico which modified that of the District Court of San Juan, be reversed.

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I hereby certify that the foregoing petition, in my opinion, is well founded and entitled to be considered by this Court, and, further, that it is filed in good faith and not for the purpose of delay.

San Juan, Puerto Rico, July 19, 1944.

F. Fernandez Cuyar.